

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern California Edison Company (E 338-E) for Authority to Institute a Rate Stabilization Plan with a Rate Increase and End of Rate Freeze Tariffs.	Application 00-11-038 (Filed November 16, 2000)
Emergency Application of Pacific Gas and Electric Company to Adopt a Rate Stabilization Plan. (U 39 E)	Application 00-11-056 (Filed November 22, 2000)
Petition of THE UTILITY REFORM NETWORK for Modification of Resolution E-3527.	Application 00-10-028 (Filed October 17, 2000)

**ADMINISTRATIVE LAW JUDGE'S RULING NOTIFYING PARTIES OF THE
TIME IN WHICH TO RESPOND TO THE REQUEST TO TAKE STEPS
REGARDING UNDER-REMITTANCES**

Summary

In Decision (D.) D.02-05-048, the Commission approved the Servicing Order concerning Pacific Gas and Electric Company (PG&E) and the California Department of Water Resources (DWR), and ordered PG&E to comply with all of the terms and conditions of that Servicing Order. The Servicing Order was subsequently amended by D.02-12-072.

On March 6, 2003, DWR transmitted a Memorandum to Commissioners Brown and Lynch requesting that the Commission "take any necessary steps to ensure the Department receives appropriate remittances from all energy

delivered to retail customers in PG&E's service territory." (Memorandum, p. 1.) DWR asserts that it is not recovering its revenue requirement for all of the energy delivered to retail customers in PG&E's service territory due to the delivery of this energy to serve load associated with PG&E's contractual obligations with the Western Area Power Administration (WAPA). DWR estimates that "PG&E's failure to remit the retail rate for this power, as contemplated in DWR's 2003 revenue requirement determination, amounts to approximately \$250 million for 2001 and the first half of 2002 and an estimated \$220 - \$300 million for the balance of 2002." (Memorandum, p. 1.) If this under-remittance issue continues, DWR estimates a further under-remittance of \$238 million for 2003.

In a letter dated March 14, 2003 from Southern California Edison Company (SCE) to Commissioners Brown and Lynch, SCE states that it "fully supports DWR's request for Commission resolution of the WAPA underpayment issue."

Today's ruling treats DWR's March 6, 2003 Memorandum as a request to modify D.02-05-048 and D.02-12-072. Interested parties may file a response to DWR's Memorandum on or before April 7, 2003. DWR may submit a reply to the responses on or before April 17, 2003.

Background

The DWR Memorandum was transmitted to the service lists in Application 00-11-038 and in Rulemaking 01-10-024 on March 6, 2003. The Memorandum raises concerns that PG&E has failed to remit to DWR any remittances for the energy used to serve load associated with PG&E's WAPA contract obligations. DWR contends that the under-remittance problem occurred because PG&E is interpreting various Commission orders in the following manner:

“remittances by PG&E to DWR are based on a formula with definitions that, as applied by PG&E, do not compensate DWR for the energy delivered by PG&E to serve WAPA, even though PG&E interprets other Commission orders to require the use of DWR energy to serve WAPA.” (Memorandum, p. 6.)

The WAPA load issue was discussed in D.02-05-048 at pages 11 to 12, and in D.02-12-072 at pages 17 to 18. DWR also points out that in the Operating Order decision for PG&E, D.02-12-069, the WAPA load is excluded from the definition of “Utility Supply.”

According to DWR, Utility Supply is “used in calculating respective DWR and PG&E percentages of load for purposes of remittance to DWR of revenue from surplus energy sales.” (Memorandum, p. 6.) DWR contends that due to the use of the phrase “total demand” in D.02-12-072, instead of “total retail demand,” PG&E has interpreted D.02-12-072 and D.02-12-069 “in a manner that does not require remittances for DWR energy purportedly used to serve WAPA load.” (Memorandum, p. 7.)

DWR notes that the draft decision in R.01-10-024 regarding PG&E’s December 20, 2002 motion for the approval of an operating agreement with DWR, which was issued on February 24, 2003, would treat WAPA load as a wholesale obligation of PG&E and would not be served by DWR energy. DWR asserts, however, that the draft decision “does not clearly and unambiguously resolve the issue of whether WAPA load is served by DWR supplied power or URG.” (Memorandum, p. 7.)

Issues Raised By The Memorandum

DWR's Memorandum raises two issues. The first issue is whether any Commission decisions need to be modified in order to resolve the under-remittance issue.

DWR's Memorandum suggests that PG&E is taking advantage of certain inconsistencies in the Servicing Order approved in D.02-05-048 and D.02-12-072, and the Operating Order approved in D.02-12-069. DWR believes that the language regarding "Utility Supply" in D.02-12-069 is consistent with how DWR models the WAPA load, i.e., that WAPA load is served with Utility Supply as opposed to DWR supply. Although DWR's Memorandum does not request any specific changes to the two Servicing Order decisions, the tenor of DWR's Memorandum suggests that D.02-05-048 and D.02-12-072 should be modified by replacing the phrase "total demand" in Section 3 of Attachment B of the Servicing Order with the phrase "total retail demand." Accordingly, DWR's March 6, 2003 Memorandum request shall be treated as a request to modify D.02-05-048 and D.02-12-072, and interested parties may file a response to DWR's Memorandum on or before April 7, 2003.

Other Commission decisions or proceedings could be impacted if the language in the Servicing Order decisions are changed. One proceeding that is likely to be impacted is the true-up procedure for DWR's 2001-2002 revenue requirement, which is being considered in this Docket. Anyone filing a response to DWR's Memorandum request to modify D.02-05-048 and D.02-12-072 may comment on whether the Commission needs to modify any other decisions, or to consider the impact of a possible language change in any other proceeding.

The second issue that DWR's Memorandum request raises is what should be done about the under-remittances associated with DWR energy that was or is

being used to fulfill PG&E's wholesale contract obligations to WAPA. Based on the Memorandum, it appears that there are three concerns.

The first concern is whether PG&E should be directed to remit to DWR the amounts it received from WAPA for the DWR energy that was supplied to WAPA. Based on the Memorandum, it appears that PG&E has not remitted any amount to DWR for the DWR energy that was supplied to WAPA. The end result is that PG&E apparently received the benefit of being supplied with DWR energy to fulfill its WAPA obligation, but PG&E has not paid DWR anything for this supply since it has retained the monies that WAPA paid to PG&E.

The second concern is whether the Commission should direct PG&E to remit to DWR the entire remittance rate for all of the DWR energy supplied to WAPA. The Memorandum suggests that since the DWR energy should be treated as having been delivered to PG&E's customers, instead of to WAPA, that PG&E should be responsible for the full remittance rate for this energy, instead of the amount that WAPA paid to PG&E for the energy.

The third concern is what the Commission should do to avoid future under-remittances to DWR. The Memorandum infers that the problem of future under-remittances can be eliminated by treating the WAPA load "as a wholesale obligation and not include PG&E's WAPA obligations in the load served by energy delivered by DWR to PG&E's service territory," as agreed to by PG&E and DWR. (Memorandum, p. 7.) This agreement between PG&E and DWR is contained in the proposed operating agreement that is the subject of the February 24, 2003 draft decision in R.01-10-024, which is on the Commission's agenda for April 3, 2003. The Memorandum further states that unless expressly directed by the Commission, "PG&E will not adjust Utility Supply to account for PG&E obligations to serve WAPA load from the URG portfolio." (Memorandum, p. 8.)

The responses to DWR's Memorandum request to modify D.02-05-048 and D.02-12-072 should address these three concerns.

In order to have as much information as possible about the under-remittance issue associated with the WAPA load, DWR will be allowed to submit a reply to any responses to DWR's Memorandum request to modify D.02-05-048 and D.02-12-072.

IT IS RULED that:

1. The March 6, 2003 Memorandum request of the California Department of Water Resources (DWR) to Commissioners Brown and Lynch shall be treated as a request to modify the Servicing Orders that were approved in Decision (D.)02-05-048 and D.02-12-072.

2. Interested parties may file a response to DWR's Memorandum request to modify these Servicing Order decisions for PG&E, and such responses shall be filed with the Commission's Docket Office on or before April 7, 2003.

3. DWR may submit a reply to any responses that may be filed, and such reply shall be submitted and served on or before April 17, 2003.

4. In addition to the service list in this Docket, a copy of today's ruling shall also be served on the service list in Rulemaking 01-10-024.

Dated March 24, 2003, at San Francisco, California.

/s/ JOHN S. WONG

John S. Wong
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Notifying Parties Of The Time In Which To Respond To The Request To Take Steps Regarding Under-Remittances on all parties of record in this proceeding or their attorneys of record.

Dated March 24, 2003, at San Francisco, California.

/s/ CLAIRE JOHNSON

Claire Johnson

N O T I C E

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